

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMONI HUGHES
Claimant

MARKETLINK INC
Employer

APPEAL 18A-UI-06792-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/29/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 20, 2018 (reference 05) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was unduly limiting her availability for work. The parties were properly notified of the hearing. A telephone hearing was held on March 28, 2017. The claimant participated personally. The employer did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant available for work effective May 27, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed an initial claim for unemployment insurance benefits with an effective date of April 29, 2018 after she separated from full-time employment at Cognizant Technology Solutions. Her base period includes the first quarter of 2017 through the fourth quarter of 2017. Other employers in her base period include Wells Fargo Bank, N.A. and Iowa CVS Pharmacy LLC. Claimant worked full-time at Wells Fargo Bank, N.A. and at Iowa CVS Pharmacy LLC. During her full-time employment with all three employers, she used the city bus for transportation to work. Claimant does not have a driver's license.

When claimant filed her weekly continued claim for benefits for the week-ending June 2, 2018, she reported that she refused an offer of work. A fact-finding interview was held with Marketlink Inc. regarding the potential disqualification for a refusal of offer of work. Following the fact-finding interview, the representative's decision dated June 20, 2018 (reference 05) determined that claimant was not eligible for benefits because she had no means of transportation to the area where work exists.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is available for work effective May 27, 2018. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.24(4) provides:

(4) Work refused when the claimant fails to meet the benefit eligibility conditions of Iowa Code section 96.4(3). Before a disqualification for failure to accept work may be imposed, an individual must first satisfy the benefit eligibility conditions of being able to work and available for work and not unemployed for failing to bump a fellow employee with less seniority. If the facts indicate that the claimant was or is not available for work, and this resulted in the failure to accept work or apply for work, such claimant shall not be disqualified for refusal since the claimant is not available for work. In such a case it is the availability of the claimant that is to be tested. Lack of transportation, illness or health conditions, illness in family, and child care problems are generally considered to be good cause for refusing work or refusing to apply for work. However, the claimant's availability would be the issue to be determined in these types of cases.

Before a claimant may be disqualified for failure to accept work, the individual must meet the benefit eligibility conditions of being able to and available for work. Lack of transportation would be considered a good cause reason for refusing work but the claimant would still need to satisfy the availability requirement of the law.

Iowa Admin. Code r. 871-24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual **was lost** from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. **However, an individual shall not be disqualified for restricting employability to the area of usual employment.** See subrule 24.24(7).

(emphasis added).

In this case, the claimant has established a history of using the city bus for transportation to work during her full-time employment with each of her base period employers. This is not a situation where the means of transportation by claimant was lost. The claimant has repeatedly used the city bus for transportation to work. As such, she has established her availability for work. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 20, 2018 (reference 05) unemployment insurance decision is reversed. The claimant is available for work effective May 27, 2018. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs